

## Practitioner's Docket No. 408445

## REMARKS

Claims 1-20 are pending in the application. Claims 1-5, 6-8, and 10-16 are currently amended.

Claims 1 and 4 and 8 are amended to recite that the repeats carry a non-native gene of interest with respect to the host plant cells. Support for this amendment exists in paragraph 36 of the published application, and other places in the specification. Because the reference to a non-native gene has no basis apart from the host plant cells, claim 1 has also been amended to recite the construct as a system including also the host plant cells. Claims 2, 3, 6, 7, and 10-16 have been amended to recite the construct system. Claim 8 has been amended to include the limitations of claim 1 prior to the current amendment.

The Examiner indicates that claims 2, 3, 5, 7-9-11, 13, 16, 19 and 20 would be allowable if rewritten into independent form.

**Claim Rejections—35 U.S.C. §102(e) and §103(a)**

Claims 1 and 4 stand rejected under 35 U.S.C. §102(e) over United States Patent No. 6,534,315 issued to Bauer. Claims 1, 6, 10, 12, 14, and 15 stand rejected under 35 U.S.C. §103(a) over Bauer. Claim 21 is a new claim.

Bauer teaches the transformation of yeast. In column 6 at lines 52-67 Bauer specifically provides that the DRS thereof are nonexogenous with respect to the host genome. (See Bauer abstract). As amended, claims 1 and distinguish Bauer by reciting that the repeats are non-native with respect to the host plant genome.

Claims 1 and 4 stand rejected under 35 U.S.C. §102(e) as being anticipated by Bauer et al. This is not the case where Bauer et al. teaches that the DRS thereof are nonexogenous with respect to the host genome, and the amended claims now distinguish this aspect of Bauer. Furthermore, Bauer teaches the use of DRS repeats in yeast, whereas the present claims address this concept in plants. We respectfully submit that these claims are not anticipated and should be allowed.

Claims 1, 6, 10, 12, 14 and 15 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Bauer et al. This is not the case where Bauer teaches away from the claimed use of non-native DNA. Furthermore, Bauer pertains to yeast, whereas the amended claims

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address plants. We respectfully submit that these claims address nonobvious subject matter and should be allowed.

Applicant wishes to thank the Examiner for the indication that claims 2, 3, 5, 7-9, 11, 13, 16 19 and 20 would be allowable if rewritten in independent form. New claim 21 recites the combination of the limitations of former claim 1 with former claim 2, according to the indication that this combination is allowable.

Based upon the foregoing discussion, Applicant's attorney submits that the amended claims are allowable and respectfully solicits a Notice of Allowance. The Commissioner is authorized to charge any additionally required fees to deposit account 12-0600.

Respectfully submitted,

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